

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:05-cv-00329-TCK-SAJ
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**OBJECTIONS AND RESPONSES OF STATE OF OKLAHOMA TO  
SEPARATE DEFENDANT TYSON POULTRY INC.'S  
FIRST SET OF INTERROGATORIES  
PROPOUNDED TO PLAINTIFFS**

The Plaintiff State of Oklahoma respectfully submits its objections and responses to Defendant Tyson Poultry, Inc.'s First Set of Interrogatories propounded to Plaintiffs. The State maintains records in numerous locations and many agencies and its records review is on going. The State shall supplement the following responses and attached privilege logs should additional responsive or privilege-protected documents come to its attention.

**GENERAL OBJECTIONS**

1. The State objects to these discovery requests to the extent that they seek the discovery of information that is protected by the attorney-client privilege and/or the work product doctrine.
2. The State objects to these discovery requests to the extent that they seek the discovery of information that is already in the possession of defendant, is obtainable from another source that is more convenient, less burdensome or less expensive, or is as accessible to defendant as it is to the State. As such, the burden of obtaining such sought-after information is substantially the same, or less, for defendant as it is for the State.

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by its privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action or if the State identifies additional documents subject to a claim of privilege or protection.

The State further objects to this interrogatory to the extent this information has already been provided to the Poultry Integrator Defendants in response to one or more Open Records requests made by one or more of the Poultry Integrator Defendants.

Subject to and without waiving its general or specific objections, the State contends that violations of the Oklahoma Administrative Code by Tyson Defendant and / or persons and entities for which Tyson Defendant are legally responsible include, without limitation, one or more of the following specific provisions: OAC 785 Chapter 45 and 46 (Water Quality Standards and Implementation). The State's investigation of these matters is, however, continuing, and this could change. The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e)

**INTERROGATORY NO. 9:**

Please Identify all reports, studies, Publications, research, sampling

data or monitoring data which demonstrates or which the State believes tends to demonstrate that the soil, water, sediments or biota in the IRW has been injured by or become contaminated with phosphorus or phosphorus compounds disposed of or released by the Tyson Defendant or any person or Entity for which the Tyson Defendant may allegedly be held legally responsible.

**OBJECTIONS AND RESPONSE TO NO. 9:** The State objects to this interrogatory on the ground that it seeks information protected by the attorney-client privilege and / or work product protection.

The State objects to this interrogatory on the grounds that it improperly seeks identification of "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "all" items of responsive information to this interrogatory.

The State further objects to this interrogatory to the extent this information has already been provided to the Poultry Integrator Defendants in responses to previous interrogatories, and/or in response to one or more Open Records Requests made by one or more of the Poultry Integrator Defendants.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by the attached privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action or if the State identifies additional documents subject to a claim of privilege or protection.

Subject to the forgoing general and specific objections the State believes that following publically available websites contain information that demonstrates or tends to demonstrate that the soil, water, sediments or biota in the IRW has been injured by or become contaminated with phosphorus or phosphorus compounds disposed of or released by the Tyson Defendant or any person or Entity for which the Tyson Defendant may allegedly be held legally responsible:

<http://www.ose.state.ok.us/documents.html#972>  
<http://www.owrb.state.ok.us/quality/monitoring/bump.php>  
[http://www.okcc.state.ok.us/WQ/WQ\\_reports.htm](http://www.okcc.state.ok.us/WQ/WQ_reports.htm)  
<http://www.deq.state.ok.us/WQDnew/pubs.html>  
<http://ok.water.usgs.gov>

Subject to the foregoing general and specific objections, the State believes the following studies demonstrate or tend to demonstrate that the soil, water, sediments or biota in the IRW has been injured

by or become contaminated with phosphorus or phosphorus compounds disposed of or released by the Tyson Defendant or any person or Entity for which the Tyson Defendant may allegedly be held legally responsible:

Aillery, M.; Gollehon, N.; Johansson, R.J.; Kaplan, J.; Key, N.; Ribaud, M. (2005) Managing Manure to Improve Air and Water Quality. Economic Research Report 9. U.S. Department of Agriculture, Economic Research Service.

Carpenter, S.R.; Caraco, N.F.; Correll, D.L.; Howarth, R.W.; Sharpley, A.N.; Smith, V.H. (1998) Nonpoint Pollution of Surface Waters with Phosphorus and Nitrogen. Ecological Applications 8(3):559-568.

Chapman, S.L. (1996) Soil and Solid Poultry Waste Nutrient Management and Water Quality. Poultry Science 75(7):862-866

Daniel, T.C.; Sharpley, A.N.; Lemunyon, J.L. (1998) Agricultural Phosphorus and Eutrophication: A Symposium Overview. Journal of Environmental Quality. 27:251-257.

Gade, D.R. (1998) An Investigation of the Sources and Transport of Nonpoint Source Nutrients in the Illinois River Basin in Oklahoma and Arkansas. M.S. Thesis, Oklahoma State University, 286 p.

Phan, T. (2001) Cost of Water Pollution Abatement for Poultry Farms in Beaty Creek Watershed, Oklahoma. PhD Dissertation. Oklahoma State University, 114 p.

Sharpley, A. (1999) Agricultural Phosphorus, Water Quality, and Poultry Production: Are They Compatible? Environment and Health, Symposium: Reducing the Environmental Impact of Poultry Production: Focus on Phosphorus, 660-673.

Slaton, N.A.; Brve, K.R.; Daniels, M.B.; Daniels, T.C.; Norman, R.J.; Miller, D.M. (2004) Nutrient Input and Removal Trends for Agricultural Soils in Nine Geographic Regions in Arkansas. Journal of Environmental Quality. 33:1606-1615.

The State also refers you to Interrogatory answers previously given in Tyson Chicken Interrogatory Nos. 5 and 6. The State reserves its right to supplement its answer to this interrogatory pursuant to Fed.

R. Civ. P. 26(e).

**INTERROGATORY NO. 10:** Please Identify all reports, studies, Publications, research, sampling data or monitoring data which demonstrates or which the State believes tends to demonstrate that the soil, water, sediments or biota in the IRW has been injured by or become contaminated with nitrogen or nitrogen compounds disposed of or released by the Tyson Defendant or any person or Entity for which the Tyson Defendant may allegedly be held legally responsible.

**OBJECTIONS AND RESPONSE TO NO. 10:** The State objects to this interrogatory on the ground that it seeks information protected by the attorney-client privilege and / or work product protection.

The State objects to this interrogatory on the grounds that it improperly seeks identification of "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "all" items of responsive information to this interrogatory.

The State further objects to this interrogatory to the extent this information has already been provided to the Poultry Integrator Defendants in responses to previous interrogatories, and/or in response to one or more Open Records Requests made by one or more of the Poultry Integrator Defendants.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation



of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by the attached privilege log. Also, pursuant to LCvR 26.4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action or if the State identifies additional documents subject to a claim of privilege or protection.

Subject to the foregoing general and specific objections, the State believes that the following publically available websites demonstrate or tend to demonstrate that the soil, water, sediments or biota in the IRW has been injured by or become contaminated with nitrogen or nitrogen compounds disposed of or released by the Tyson Defendant, or by a person or Entity for which the Tyson Defendants are legally responsible:

<http://www.owrb.state.ok.us/quality/monitoring/bump.php>  
[http://www.okcc.state.ok.us/WQ/WQ\\_reports.htm](http://www.okcc.state.ok.us/WQ/WQ_reports.htm)  
<http://www.deq.state.ok.us/WQDnew/pubs.html>  
<http://ok.water.usgs.gov>  
<http://www.ose.state.ok.us/documents.html#972>

Subject to the foregoing general and specific objections, the State believes that the following studies demonstrate or tend to demonstrate that the soil, water, sediments or biota in the IRW has been injured by or become contaminated with nitrogen or nitrogen compounds disposed of or released by the Tyson Defendant, or by a person or Entity for which the Tyson Defendants are legally responsible:

Adamski, J.C.; Steele, K.F. (1988) Agricultural Land Use Effects on Groundwater Quality in the Ozark Region: Proceedings of Agricultural Impacts on Groundwater Conference, National Water Well Association, Dublin, OH, pp. 593-614.

Buchberger, E. (1991) An Economic and Environmental Analysis of Land Application of Poultry Litter in Northwest Arkansas. M.S. Thesis, University of Arkansas, Fayetteville, 108 p.

Cox, G.D.; Ogden, A.E.; and Slavik, G. (1980) Contamination of Boone-St. Joe Limestone Groundwater by Septic Tanks and Chicken Houses. Arkansas Academy of Science Proceedings, Vol. XXXIV, 41-44.

Peterson, E. W.; Davis, R. K.; Brahana, J. V.; Orndorff, H.A. (2002) Movement of Nitrate Through Regolith Covered Karst Terrain, Northwest Arkansas. Journal of Hydrology 256(1-2):35-47.

Phan, T. (2001) Cost of Water Pollution Abatement for Poultry Farms in Beaty Creek Watershed, Oklahoma. PhD Dissertation. Oklahoma State University, 114 p.

Sauer, T. J.; Moore, P. A., Jr.; Coffey, K. P.; Rutledge, E. M. (1998) Characterizing the Surface Properties of Soils at Varying Landscape Positions in the Ozark Highlands. Soil Science 163(11):907-915.

Smith, C.R. (1992) Ground Water Chemistry and Quality in Benton County, Arkansas with a Suggested Ground Water Flow Model for Northwestern Arkansas. MS Thesis, University of Arkansas, Fayetteville, 192 p.

Steele, K.; McCalster, W.K. (1990) Nitrate Concentrations of Ground Water from Limestone and Dolomitic Aquifers in the Northeastern Washington County Area, Arkansas. Arkansas Water Resources Center Publication No. MSC-68, 33 p.



Wolf, D. C.; Gilmour, J. T.; Gale, P. M. (1988) Estimating Potential Ground and Surface Water Pollution from Land Application of Poultry Litter; II. Arkansas Water Resources Research Center Publication No. 137, 34 p.

The State also refers you to previous answers given in Tyson Chicken Interrogatories No. 7. The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

**INTERROGATORY NO. 11:** Please Identify all reports, studies, Publications, research, sampling data or monitoring data which demonstrates or which the State believes tends to demonstrate that the soil, water, sediments or biota in the IRW has been injured by or become contaminated with arsenic or arsenic compounds disposed of or released by the Tyson Defendant or any person or Entity for which the Tyson Defendant may allegedly be held legally responsible.

**ANSWER TO NO. 11:** The State objects to this interrogatory on the ground that it seeks information protected by the attorney-client privilege and / or work product protection.

The State objects to this interrogatory on the grounds that it improperly seeks identification of "all" items of responsive information, which renders it overly broad, oppressive, unduly burdensome and expensive to answer. It may be impossible to locate "all" items of responsive information to this interrogatory.

The State further objects to this interrogatory to the extent this information has already been provided to the Poultry Integrator Defendants in responses to previous interrogatories, and/or in response to one or more Open Records Requests made by one or more of the Poultry Integrator Defendants.

The State objects to this interrogatory to the extent that it seeks information known or opinions held by expert consultants retained or specially employed by the State or by its counsel in anticipation of litigation or preparation for trial. Fed. R. Civ. P. 26(b)(4)(A) and (B). As of the date of this response, the

State has not determined which experts retained by it or by its counsel will provide expert testimony in this case, and the Court has neither established the times and sequence of disclosure of such expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(C), nor has the Court established a trial date to trigger the obligation of expert disclosure 90 days in advance of trial under that rule. The State will comply with the order of the Court establishing the time of expert disclosures as required by Fed. R. Civ. P. 26

The State also objects pursuant to Fed. R. Civ. P. 26(b)(3) to any discovery of documents or tangible things prepared in anticipation of litigation or for trial by it or by consultants retained by it or by its counsel.

Pursuant to Fed. R. Civ. P. 26(b)(5) and LCvR 26.4, the State's claim of attorney-client privilege and work product protection is supported by the attached privilege log. Also, pursuant to LCvR 26 4(b), the attached privilege log does not contain any work product protection material or attorney-client privileged material created after the commencement of this action on June 13, 2005. The State reserves its work product protection claim and attorney-client privilege claim for all such materials, and reserves its right to supplement the attached privilege log should the Court enter any order requiring a log for protected or privileged materials created after the commencement of this action.

Subject to the foregoing general and specific objections, the State believes that the following reports demonstrate or tend to demonstrate that the soil, water, sediments or biota in the IRW have been injured by or become contaminated with arsenic or arsenic compounds disposed of or released by the Tyson Defendants or by a person or Entity for which the Tyson Defendant are legally responsible:

Arai, Y.; Lanzirotti, A.; Sutton, S.; Davis, J.A.; Sparks, D.L. (2003) Arsenic Speciation and Reactivity in Poultry Litter. Environmental Science and Technology, 37(18): 4083 - 4090

Brown, B.L. (2003) The Sorption of Roxarsone, an Organoarsenical Animal Feed Additive. M.S. Thesis, Virginia Polytechnic Institute and State University, 95 p.

Bellows, B.C. (2005) Arsenic in Poultry Litter: Organic Regulations. National Sustainable Agriculture Information Service, 12 p.

Blackerby, S.D. (1997) Evaluation of Nonpoint Source Pollution Concentrations Due to Runoff from Agricultural Land Applied with Broiler Litter. M.S. Thesis, Stephen F. Austin State University, Nacogdoches, TX, 100 p.

Moore, P.A., Jr.; Daniel, T.C.; Gilmour, J.T.; Shreve, B.R.; Edwards, D.R. (1998) Decreasing Metal Runoff from Poultry Litter with Aluminum Sulfate. Journal of Environmental Quality. 27:92-99.

Nachman, K.E.; Graham, J.P.; Price, L.B.; Silbergeld, E.K. (2005) Arsenic: A Roadblock to Potential Animal Waste Management Solutions. Environmental Health Perspective 113:1123-1124 (2005) doi:10.1289/ehp.7834 available via <http://dx.doi.org/> [Online 12 May 2005].

Wilde, F.D.; Britton, L.J.; Miller, C.V.; Kolpin, D.W. (2000) Effects of Animal Feeding Operations on Water Resources and the Environment - Proceedings of the technical meeting, Fort Collins, Colorado, August 30 - September 1, 1999. United States Geological Survey Open-File Report 00-204, 107 p.

The State also refers you to previous answers given in Tyson Chicken Interrogatories No. 8. The State reserves its right to supplement its answer to this interrogatory pursuant to Fed. R. Civ. P. 26(e).

Respectfully submitted,

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